

REMARKS

On July 14, 2003 applicants submitted a response to a Restriction Requirement retaining claims 1-25 and canceling claims 26-42, without prejudice. In a first Office Action, the Examiner has rejected claims 1-25. Claims 1, 3, 5, 7, 8, 20-23, and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,212,217, issued to Furgason. Claims 1, 3, 4, and 25 also stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,425,805, issued to Massa et al. In addition, the Examiner rejected claims 2, 4, 6, and 9-17 under 35 U.S.C. § 103(a) as being obvious in view of either Furgason or Massa et al. in combination with U.S. Patent No. 23,064 issued to Tirrell. Claims 18, 19, and 24 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of either Furgason or Massa et al. in combination with Tirrell and in further combination with U.S. Patent No. 5,320,289 issued to Hashish et al.

The application, as amended herein, currently contains pending claims 1, 5-8, 17-24, and 43-55. Accordingly, applicants request that the above amendments be entered into the file, and that the Examiner consider the amendments and the following remarks. Applicants assert that the claims as currently amended are in condition for allowance, and respectfully request the same.

Claim 1, as amended – Section 102 Rejections

Amended claim 1 combines original claim 1 and original claim 4. As mentioned above, the Examiner rejected original claim 1 under Section 102 as being anticipated by either Ferguson or Massa et al. However, applicants have amended claim 1 to include “a containment sleeve formed around the segments by metal spray forming for coupling the segments together.” A containment sleeve formed by a spray metal process is not disclosed in either Furgason or Massa et al. Claim 1, as amended, is therefore not anticipated by either of these references.

Claim 1, as amended – Section 103 Rejections

Original claim 4 stands rejected under Section 103 as being obvious in view of either Furgason or Massa et al. combined with Tirrell alone or combined with both Tirrell and Hashish et al. The Examiner has expressed the opinion that “metal spray forming around

segments is deemed to be an obvious matter of design choice.” Applicants note that the cited references of Tirrell and Hashish et al., or any combination thereof, do not teach, motivate, or suggest that a containment sleeve may be spray metal formed about a plurality of segments. Thus, the Examiner’s 103 rejection of spray metal forming appears to be based solely on the belief that it is an obvious design choice.

Applicants respectfully submit that the Examiner has failed to set forth a *prima facie* case of obviousness. Statements that modifications to the prior art are merely a matter of design choice, or alternatively stated, well known by one of ordinary skill in the art, are not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ.2d 1300 (Bd. Pat. App. & Inter. 1993); and *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ.2d 1313, 1318 (Fed. Cir. 2000) (obviousness rejection reversed involving technologically simple concept because examiner did not present any specifics as to why a skilled artisan would have been motivated to make the claimed invention). Moreover, an examiner’s assertion that certain facts are asserted to be well-known or common knowledge in the art must be capable of unquestionable demonstration as being well-known. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970).

Given that the Examiner has not posited any objective reason as to why spray metal forming would be a common design choice, a *prima facie* case of obviousness has not yet been established. Accordingly, claim 1, as amended, and the claims that depend therefrom are not anticipated or obvious in view of the prior art references cited by the Examiner.

New Claim 43 – Section 102 Rejections

New independent claim 43 includes original claim 1 and the features of several dependent claims (original claims 16 and 17). The additional features included in amended claim 43 consisting of “a chamber formed between two adjacent segments when at least one of the segments is spaced axially from an adjacent segment to form the chamber” and “at least one sensor located within the chamber” are not disclosed, taught or suggested by the cited art. Therefore, applicants assert that claim 43 is not anticipated by either Furgason or Massa et al.

New Claim 43 – Section 103 Rejection

Because new claim 43 combines the previously filed claims as identified above, applicants have chosen to discuss the Examiner's Section 103 rejections in light of Furgason or Massa et al., each being combined with both Tirrell and Hashish et al. The Examiner asserts that Tirrell discloses a nozzle with segments 9/10/11 that are spaced apart to form one or more chambers 12/13 and that Hashish et al. discloses a pressure sensor 43 for an abrasive waterjet nozzle.

Hashish et al. does not teach, suggest, or provide any motivation for locating a sensor within a chamber formed in a segmented nozzle. Hashish et al. discloses that an abrasive waterjet nozzle can have a connection 43 for a jewel health sensor (column 4, line 29) where the purpose of jewel health sensor would be to monitor the pressure in an abrasive port 45 extending from the nozzle body 24 (column 4, lines 59-60). Figure 2 in Hashish et al. depicts the connection 43 as being externally located to the nozzle body 24, and not within the nozzle body 24. In another embodiment, Hashish et al. discloses a jewel health sensor 106 (column 5, line 25) and further discloses that a conduit 131 from the jewel health sensor port of nozzle assembly 115 is connected to a converter 133, which converts the pressure signal into an electronic signal understandable by controller 101 (column 5, lines 50-53). Although Hashish et al. discloses that the sensor is a pressure sensor located in a port connecting to the nozzle body, there is no teaching, suggestion, or motivation that a sensor could be placed within a chamber formed by two adjacent and spaced apart nozzle segments. Applicants submit that claim 43, as amended, is neither anticipated nor obvious in light of the art cited by the Examiner and that claim 43, along with each claim dependent thereon, is in allowable form.

Applicants respectfully request that the Examiner consider the amendments and remarks herein, which further distinguish the present invention over the prior art. Applicants assert that the amended claims are patentable under Sections 102 and 103.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 09/919,778
Reply to Office Action dated September 26, 2003

All of the claims remaining in the application are now clearly allowable.
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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